



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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May 26, 1999

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By Overnight Mail

Magalie R. Salas, Secretary
Office of the Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

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RE: WT Docket No. 98-229, CC Docket No. 95-116: In the Matter
Cellular Telecommunications Industry Association's Petition for
Forbearance From Commercial Mobile Radio Service Number
Portability Obligations and Telephone Number Portability

Petition For Reconsideration and/or Clarification of the
Pennsylvania Public Utility Commission

Dear Ms. Salas:

Enclosed for filing are an original and four copies of the Petition of the Pennsylvania
Public Utility Commission (PaPUC) regarding the above-captioned matter.

I thank you for your assistance in matter.

Sincerely,

Stephen E. Gorka ,
Assistant Counsel
PaPUC Law Bureau
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 772-8840

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Enclosure

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Cellular Telecommunications Industry
Association's Petition for Forbearance
From Commercial Mobile Radio Services
Number Portability Obligations**

and

Telephone Number Portability

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WT Docket No. 98-229

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CC Docket No. 95-116

**PETITION FOR RECONSIDERATION AND/OR CLARIFICATION
OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

INTRODUCTION

The Pennsylvania Public Utility Commission (PaPUC) hereby respectfully requests that the Federal Communications Commission (Commission) reconsider its Memorandum Opinion and Order on Reconsideration (CTIA Order) adopted on February 8, 1999 in the above-captioned matter. Specifically, the PaPUC requests that the Commission continue to hold commercial mobile radio service (CMRS) providers accountable for those local number portability (LNP) requirements that are currently applicable to wireline carriers.

The PaPUC has a strong interest in this matter. The forbearance of LNP in this instance directly impacts number conservation efforts which the PaPUC strongly support as it continues to wrestle with the problems of number exhaustion and area code proliferation. Although the PaPUC is an interested party in this matter, due to the press of business, our previous comments

addressing the CTIA Petition were filed *ex parte*.¹ The PaPUC believes that it already has party status to file the instant petition because the CTIA Petition granted in the CTIA Order was a petition for forbearance, rather than an adjudicatory matter. Nonetheless, to ensure our ability to comment on this matter and to preserve all relevant appeals, the PaPUC respectfully requests that the Commission extend party status to the PaPUC in the above-captioned matter and accept for consideration the instant petition or, in the alternative, the instant request for clarification.

THE PENNSYLVANIA POSITION

PETITION FOR RECONSIDERATION

THE COMMISSION SHOULD NOT RELIEVE CMRS PROVIDERS FROM NUMBER CONSERVATION EFFORTS THAT ARE NEEDED TO PREVENT UNNECESSARY AREA CODE RELIEF THROUGHOUT THE NATION.

The Commission found that it was in the public interest to forbear the application of LNP requirements to CMRS providers until November of 2002. CTIA Order paragraph 25. The Commission opined that the wireless industry needed additional time beyond the current March 31, 2000 implementation deadline to develop and deploy the needed technology. In addition, the Commission concluded that the forbearance would allow CMRS carriers to use their funds to complete network buildup, technical upgrades, and other actions likely to enhance service to the public and promote competition in the marketplace. *Id.* The Commission also found that the

¹ *Ex Parte Presentation of the Pennsylvania Public Utility Commission relating to In the Matter of CTIA Petition Requesting Forbearance From CMRS Number Portability Requirements*, CC Docket No 95-116 and DA-98-111, filed December 14, 1998.

competitive benefits of wireless carrier LNP do not justify the cost and technical burden that LNP technology will place on wireless carriers at this time. Id.

As a rationale for its grant of this forbearance, the Commission focused on the promotion of competition among wireless carriers and the resulting benefit to the public. CTIA Order paragraph 34.² Although wireless service competition can benefit the public if that competition results in enhanced service at decreased cost, the Commission's benevolent attitude towards wireless carriers must be sufficiently tempered to hold the wireless industry accountable for behavior which has a negative impact on the public. It is imperative that the Commission realize that wireless carriers currently engage in detrimental behavior by consuming scarce numbering resources without any apparent willingness to conserve these numbers or participate meaningfully in state efforts to address these challenges. The Commission should not allow this unfettered consumption to continue, yet the forbearance granted in the CTIA Order does nothing to restrain this activity.

Pennsylvania, as do many other states, currently faces an escalating number exhaustion crisis. The PaPUC is committed to implementing number optimization and conservation measures to alleviate the current NXX shortage in Pennsylvania's NPAs, albeit constrained by the very limited authority granted by the Commission. The PaPUC respectfully submits that as the number allocation and area code challenge continues to be unaddressed and unresolved, the integrity of the North American Numbering Plan is placed in ever increasing jeopardy.

² See also the February 9, 1999 Prepared Speech of Chairman William E. Kennard at the CTIA Convention in New Orleans, LA; "While we believe that number portability is a good thing, we recognized that current costs may impede wireless buildout and actually hurt competition. This is just common sense, isn't it?"

Ultimately, competition in telecommunications could be adversely impacted by the public animosity which will result from the failure to effectively address this resolvable problem.

The Commission agreed that there is a compelling need for “immediate and comprehensive action” to improve the efficient use of numbering resources. CTIA Order paragraph 44. However, the Commission’s grant of forbearance aggravates the number resource problem and further restricts Pennsylvania’s ability to reduce the speed at which numbers are depleted, even as the industry demands more of these numbers.

The Commission agrees with the arguments against LNP portability proffered by CMRS providers. The CMRS providers argue that LNP forbearance will not adversely affect number conservation efforts. They argue that their use of numbering resources is efficient and that pooling cannot occur for any class of carriers until the Commission undertakes further proceedings. They also argue that for conservation efforts such as rate center consolidation, the high subscriber rate of wireless carriers in a limited number of rate centers would result in such a need for numbers that these wireless carriers would be unable to contribute significant quantities of numbers to those rate centers. CTIA Order paragraph 15.

These arguments ignore the basic fact that any telecommunications carrier, including wireless carriers, contributes to the current number exhaustion crisis unless it actually has a real and immediate need for the 10,000-number block allotment it receives under the current antiquated allotment scheme. This is rarely the situation. For example, soon after implementation of a geographic code area split in the 724 area code in the Pittsburgh area, one carrier received 82 CO codes and a second carrier received 31 CO codes. Thus, over one million

numbers were consumed by two carriers without regard to actual need. Moreover, carriers can obtain these numbers without effective accountability or regulatory oversight.³

The CMRS position also ignores the plain fact that wireless carriers have already acted to undermine state attempts at number conservation; in Pennsylvania, this is extremely frustrating given that the PaPUC lacks jurisdiction over these carriers. For example, CMRS providers have argued that any number portability-dependent conservation technique implemented by any state commission (or the FCC) is unreasonably discriminatory because the CMRS providers cannot be active participants in that technique. Other states have had similar experiences, and have raised identical concerns in their respective comments to the original CTIA Petition for Forbearance.⁴

In Pennsylvania, when the PaPUC recently proposed a voluntary number pooling or code-sharing regimen in the 215 NPA, numerous wireless carriers opposed this action. The carriers first argued that they could not partake of any of the NXXs deployed in a pooling or code-sharing environment. They then asserted that this inability to access those particular portions of NXXs, even though the PaPUC proposed a companion lottery arrangement for entire NXXs which allowed wireless carriers to participate, would constitute unreasonable discrimination against them⁵.

³ Under current NANPA guidelines, applicants must "certify a need" for requested numbers but there is no "needs based" test. The code administrator simply meets an industry request for the numbers. See Industry Numbering Committee, Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, reissued July 13, 1998, at § 4.1.1.

⁴ Maine PUC, NCUC, New York PSC and Texas Public Utility Commission. See CTIA Order footnote 48, page 12.

⁵ *Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 610, 215, 717 and 412*, NSD File No. L-97-42

The CTIA Order will only exacerbate this untenable situation. If wireless carriers remain exempt from implementing LNP, they have no incentive to address numbering resource problems and will continue to prevent the implementation of any conservation or optimization method that uses number porting technology, because they cannot use that technology themselves. The wireless industry is quickly becoming an alternative competitor to wireline service and should share the responsibility to conserve numbers. Wireless carriers can not be permitted to continue to consume state numbering resources without any accountability at the state level.

CONCLUSION

In light of the foregoing, the PaPUC requests that the Commission reconsider its CTIA Order which was adopted on February 8, 1999 and continue to hold wireless carriers responsible for the implementation of LNP requirements.. Wireless carriers have already acted to undermine state attempts at number conservation, and will continue to argue that number conservation methods that use LNP technology are discriminatory against them, because they cannot use that LNP technology themselves. Wireless carriers are consuming scarce numbering resources without any apparent willingness to conserve these numbers, and the Commission should not permit this consumption of state numbering resources without any accountability at the state level.

PETITION FOR CLARIFICATION

THE COMMISSION SHOULD CLARIFY HOW FORBEARANCE WILL AFFECT STATES' PROMOTION OF AREA CODE CONSERVATION AND HOW IT AFFECTS AVAILABLE NUMBER CONSERVATION MEASURES. MOREOVER, THE COMMISSION SHOULD CLARIFY THAT STATES HAVE AUTHORITY TO DEVELOP LOCAL NUMBER PORTABILITY PROCEDURES IF THE WIRELESS INDUSTRY IS UNABLE OR UNWILLING TO DO SO.

In the alternative, if the Commission determines that forbearance is inappropriate, the PaPUC asks the Commission to clarify how its CTIA Order affects various state number conservation issues. Specifically, the PaPUC requests clarification that the grant of forbearance will not prejudice the PaPUC's authority to promote effective area code conservation, including numbers used by wireless carriers, both in the present and at the end of the forbearance period. Effective number conservation efforts can not continue if the Commission permits the wireless industry from protesting and blocking conservation methods which use LNP technology. The wireless carriers have requested forbearance from implementing LNP, and the Commission should clarify that this forbearance also constitutes a waiver of the wireless carriers' right to protest and impede conservation methods which use LNP technology. This is only equitable. Number exhaustion (and the potential collapse of the North American Numbering Plan) affects all telecommunication carriers, and number conservation will benefit wireless carriers even if they choose to avoid committing the financial resources to implement LNP. The Commission has noted its authority to invoke future number exhaust remedies which may provide relief only for LNP-capable carriers. CTIA Order paragraph 48. The PaPUC requests that the Commission clarify the states' ability to do the same during and after any appropriate forbearance period.

The PaPUC also requests clarification as to how the CTIA Order affects the various number conservation measures available.⁶ The PaPUC supports the implementation of conservation methods such as Thousands Block Pooling, Unassigned Number Porting, Rate Center Consolidation, and Code Sharing (among others) and believes that the implementation of these methods can substantially ameliorate the current number exhaustion crisis. Although the PaPUC has separate Petitions before the Commission which request greater state authority to implement these methods, the PaPUC requests clarification as to how the CTIA Order affects the PaPUC's application of these conservation methods to telecommunications carriers in general and wireless carriers in particular.

Turning to another issue, in paragraph 33 of the CTIA Order, the Commission states that the wireless industry, not the Commission, should decide technical issues pertaining to the implementation of wireless LNP. The PaPUC recognizes that the industry is best suited to develop and to examine their own procedures. However, the PaPUC also recognizes that recent cooperative efforts between various factions of the telecommunications industry demonstrate that there is often very little consensus on issues that affect those factions. One example is the wireless industry's delay in implementing the MIN/MDN separation standard.⁷ Although

⁶ The PaPUC realizes that in Paragraph 24 of the Commission's *Pennsylvania Order (Memorandum Opinion and Order and Order on Reconsideration relating to In the Matter of the Pennsylvania Public Utility Commission Order Dated July 15, 1997 Regarding Area Code Relief in the 610, 215, 717 and 412 Area Codes*, NSD File No. L-97-42 and CC Docket No. 96-98, released September 28, 1998) the Commission delegates some authority to state commissions to order NXX code rationing only after the state makes a final area code relief decision (that is, whether area code relief should be implemented through an overlay, geographic split, or boundary change). By petition filed December 16, 1998, the PaPUC asked the Commission to reconsider this requirement and allow a state commission to impose all reasonable number conservation measures before it decides upon a specific form of area code relief. The PaPUC is still awaiting the Commission's response to that Petition for Reconsideration.

⁷ To implement wireless LNP, the industry must adopt standards to separate the Mobile Identification Number (MIN) from the Mobile Directory Number (MDN) so that the MDN can be ported when the customer

development of the MIN/MDN separation standard has been completed since August 1998, the wireless industry has still not completed the balloting and adoption process needed to implement these standards. CTIA Order paragraph 29.

In the event that the wireless industry is unwilling or unable to develop and to self-police its LNP activities and procedures, the Commission should clarify that the PaPUC is authorized to develop default systems, procedures and determinations for LNP when such action is needed in Pennsylvania. This authority is particularly important for effective intrastate oversight of wireless carrier number conservation after the lapse of forbearance in 2002. The PaPUC cautions, however, against Commission guidelines which would unduly restrict how the state commissions may develop these procedures. The PaPUC and other state commissions should be able to customize optimizations efforts and procedures to its own circumstances when the telecommunications industry fails to address its problems. This authority is necessary not only because the states are uniquely familiar with local circumstances but also because the Commission may not be able to implement and address intricate number exhaustion problems on a timely and ongoing basis given the press of other telecommunications matters..

The Commission's oversight is critical, and the Commission should agree to be an arbiter of those measures developed by the industry. Moreover, the Commission should also agree to be an arbiter of any action the state commissions opt to take if the industry fails to internally develop such measures. The Commission's authority is indispensable to resolving area code

switches carriers, but the MIN will remain programmed in the customer's old mobile phone (and can thus be reused with another MDN by the customer's former carrier).

issues in Pennsylvania and other states and should be exercised either *sua sponte* or in response to state efforts as described in this section.⁸

COMMENTS ON THE NOTICE OF PROPOSED RULEMAKING

The Commission stated that it will initiate a Notice of Proposed Rulemaking that will propose both LNP and non-LNP based number optimization techniques applicable to all telecommunications carriers. CTIA Order paragraph 48. The PaPUC recognizes the importance that the Commission attaches to the need for a uniform national number optimization policy and applauds the goal of this proposed rulemaking. To advance this goal, the PaPUC urges the Commission to implement a rulemaking which enhances number conservation on a national level and not just in areas where number exhaustion is most pronounced. Such action will better preserve the North American Numbering Plan.

However, the potential timeline of the proposed rulemaking is of great concern to the PaPUC. The Commission has not yet selected a time to initiate this rulemaking. Rather, it only states that it will propose the rulemaking “in the next few months.” *Id.* In light of the present numbering crises, the PaPUC submits that Commission action must occur on a more immediate basis.

A proposed rulemaking will inevitably solicit and prompt comments and reply comments from all interested parties; a necessary but time consuming process. Moreover, even after the proposed rulemaking is finalized, there will still be delays before various number optimization

⁸ This proposal is also discussed in a separate PaPUC petition; *Petition for Reconsideration of the Commission’s Pennsylvania Order*, filed December 16, 1998.

methods can be implemented. For example, NANC estimates that once a regulatory order or applicable rulemaking is in place, Thousand Number Block pooling might not be implemented until 10 to 17 months later.⁹ A delay of anywhere from a year to a year and a half simply will not relieve the numbering crisis and will, in fact, aggravate it. In Pennsylvania, numbering resources are being consumed in both existing and in newly created area codes at rates far in excess of actual access line growth. Conservation measures must be implemented immediately to prevent further disruptive and unnecessary number exhaustion.

The PaPUC supports the following valuable number conservation methods and urges the Commission to consider these methods for immediate implementation and inclusion in the proposed rulemaking:

1. Thousands Block Pooling

This is a form of number pooling whereby carriers are assigned numbers in blocks of 1,000 instead of 10,000. This pooling uses the Location Routing Number (LRN) method to allow one 10,000 number block to be divided among up to 10 service providers. The PaPUC supports this methodology because it better matches the allocation of numbers with a carrier's actual need for those numbers. This conservation method is already a viable option as proven by its successful use in the Chicago area¹⁰, and the PaPUC believes that this method can effectively address the area code crisis in Pennsylvania and other states.

⁹ North American Numbering Council Report Concerning Telephone Number Pooling and Other Optimization Methods submitted to the Commission on October 20, 1998 at page 97.

¹⁰ *Petition by Illinois Bell Telephone Company for Approval of an NPA Relief Plan for the 847 NPA*, Docket Nos. 97-0192 and 97-0211.

2. Unassigned Number Porting (UNP)

This conservation method is a telephone number sharing and optimization method whereby available telephone numbers in one service provider's inventory are ported, using LRN methodology, to another service provider. UNP can be used to provide numbers to a service provider who has insufficient numbers available for assignment for a specific customer request for service within a given rate area. Accordingly, UNP is beneficial because it represents another number conservation tool which can conserve existing NXXs prior to the implementation of pooling.

3. Rate Center Consolidation (RCC)

The PaPUC further believes that RCC should be considered either in tandem or apart from Thousands Block Pooling and UNP. With RCC, existing rate centers are combined or collapsed into fewer rate centers, which will reduce the number of telephone number blocks which must be deployed in a given area. This will minimize the demand for blocks of 10,000 numbers, which is particularly important as competitive local exchange carriers (CLECs) enter the market. Moreover, this conservation method does not preclude the use of any other optimization methods.

4. Code Sharing

The PaPUC has previously given serious consideration to NXX Code Sharing (an NXX Code is divided among two or more service providers using 7-digit routing in switches) and Code Sharing Using Route Indexing. The PaPUC believes that these are effective methods to

optimize NXX codes. An additional benefit of Code Sharing methods is that they can be implemented immediately in Pennsylvania and has already been used in this state.¹¹

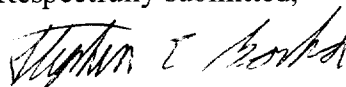
CONCLUSION

If the Commission declines to reconsider its CTIA Order of February 8, 1999 and declines to hold wireless carriers responsible for the implementation of LNP requirements, the Commission should clarify how the CTIA Order affects the states' authority to implement number conservation and how the Order affects the states' application of various specific conservation methods. The Commission should also clarify that in the event that the wireless industry is unable or unwilling to develop and self-police its LNP activities and procedures, the states are authorized to develop default systems, procedures, and determinations for LNP when such action is needed.

Finally, the PaPUC urges the Commission to act rapidly to implement a proposed rulemaking procedure to promote number conservation on a national level. Given the present number exhaustion crisis, time is of the essence. There can be no delay in state and federal attempts to relieve the numbering crisis. Failure to timely act could result in undue burden on consumers and may well threaten the viability of North American Numbering Plan as well.

¹¹ In a November 18, 1997 letter from a Nextel representative to the Commission, Nextel noted that it "purchased" 1000 215 and 610 NXXs from a CLEC, which demonstrates that code sharing is a reality and that Nextel can secure numbers in blocks of 1000.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen E. Gorka".

Stephen E. Gorka , Assistant Counsel
Pennsylvania Public Utility Commission

Frank B. Wilmarth, Deputy Chief Counsel
Pennsylvania Public Utility Commission

Bohdan R. Pankiw, Chief Counsel
Pennsylvania Public Utility Commission

Dated: May 26, 1999